

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

MICHAEL T. ALEXANDER,)	
)	
Plaintiff,)	
)	
v.)	No. CIV-05-608-L
)	
JO ANNE B. BARNHART,)	
Commissioner of Social Security)	
Administration,)	
)	
Defendant.)	

ORDER

Plaintiff brings this action pursuant to 42 U.S.C. § 405(g) for judicial review of the final decision of the Commissioner of the Social Security Administration denying his application for disability insurance benefits under the Social Security Act. Pursuant to 28 U.S.C. § 636(b), this matter was referred to the Honorable Gary M. Purcell for initial decision. On March 2, 2006, Judge Purcell issued his Report and Recommendation recommending that the Commissioner's decision be affirmed.

This matter is before the court on plaintiff's timely filed objections to the Report and Recommendation. Pursuant to 28 U.S.C. § 636(b), the court must "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." In his objections, plaintiff contends the Report does not adequately consider his argument that the vocational expert was incompetent and that the Administrative Law Judge ("ALJ") erred in his credibility determination.

The court's review of the Commissioner's decision is limited to determining "whether it is supported by substantial evidence and whether the [Commissioner] applied the correct legal standard." Washington v. Shalala, 37 F.3d 1437, 1439 (10th Cir. 1994). In making this determination, the court must closely examine the record as whole. See Andrade v. Secretary of Health and Human Servs., 985 F.2d 1045, 1047 (10th Cir. 1993). "Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" In addition to a lack of substantial evidence, the [Commissioner's] failure to apply the correct legal standards, or to show us that she has done so, are also grounds for reversal." Winfrey v. Chater, 92 F.3d 1017, 1019 (10th Cir. 1996) (citations omitted).

In accordance with the governing standards, the court has reviewed the Report and Recommendation, plaintiff's objections thereto and the case file. Based on this review, the court concludes that the Commissioner's decision should be affirmed. Contrary to plaintiff's assertion, the vocational expert at the second hearing did not need to identify plaintiff's transferrable skills; the expert who testified at the first hearing did that and the ALJ was entitled to rely on that testimony. The court notes that plaintiff does not attack the credentials or testimony of the vocational expert who testified at the initial hearing. The court finds the ALJ adequately supported the credibility determination and substantial evidence supports that finding. In accordance with the instructions of the Appeals Council, the ALJ performed a thorough analysis of the record and determined on second hearing that

plaintiff was not disabled. This is not a case where the Commissioner's decision "is overwhelmed by other evidence in the record or where there is a mere scintilla of evidence supporting it." Bernal v. Bowen, 851 F.2d 297, 299 (10th Cir. 1988).

In sum, the Report and Recommendation is approved and adopted in its entirety. The Commissioner's decision is therefore AFFIRMED. Judgment will issue accordingly.

It is so ordered this 4th day of August, 2006.



TIM LEONARD
United States District Judge